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SEP 13 2007

Technology Center 2100

In re Application of: John Rozen)
Application No. 09/757,745)
Filed: January 10, 2001)
For: **DISTRIBUTED SELECTION OF A**)
CONTENT SERVER)

**DECISION ON PETITION
UNDER 37 CFR 1.181**

This is a decision on the petition under 37 CFR 1.181, filed January 26, 2007 requesting the Group Director to determine if there is a failure, by the examiner, to grant full faith and credit to the actions of a previous examiner as required by MPEP 704.01.

Case History

3/01/2004, Examiner Klinger sent out a non-final rejection, rejecting claims 1-4, 6, 7 and 9-13 as being anticipated by Hasebe et al. (U.S. Patent Number 6,212,570). Claims 5, 8, and 14 were rejected under 103(a) as being unpatentable over Hasebe in view of Stevens et al. (TCP/IP illustrated, Volume 1: The Protocols). As stated in the Applicant's Petition, claim 9's limitation "origin server" was rejected under Hasebe.

8/26/2004, Applicant responded with an amendment to the claims adding the feature "at an origin server separate from the autonomous system, receiving a request for a client for desired content". The newly added feature was not previously presented in any of the claims.

3/10/2005, Examiner Klinger sent out a second non-final rejection, rejecting claims 1-3, 6, 7 and 10-13 under 103(a) over Hasebe in view of Mockapetris. Claims 5, 8 and 14 were rejected further in view of Stevens. In rejected claim 1, the examiner failed to reject the above limitation the Petitioner argued (i.e., "at an origin server separate from the autonomous system, receiving a request for a client for desired content") and actually stated in the office action that "In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an origin server that is separate from the content server) were not recited in the rejected claims." The Petitioner's statement of facts that Examiner Klinger "agreed that Hasebe failed

to teach the newly-added limitation" is incorrect. In fact Examiner Klinger simply failed to properly reject the claimed limitation "at an origin server separate from the autonomous system, receiving a request for a client for desired content".

9/14/2005, Applicant responded with similar arguments as presented in Applicant's response 8/26/2004.

12/15/2005, the new examiner, Examiner Barqadale sent out a non-final rejection, rejecting claims 1-3, 6 and 10-13 under 102(e) as being anticipated by Hasebe et al. (U.S. Patent Number 6,212,570) and specifically pointed out how Hasebe teaches the claimed limitations not previously addressed by the Examiner Klinger in the previous office action. Claims 5, 8, and 14 were rejected under 103(a) as being unpatentable over Hasebe in view of Stevens et al. (TCP/IP illustrated, Volume 1: The Protocols).

6/15/2006, Applicant filed a response to the office action mailed 12/15/2005 and subsequently filed a notice of appeal on December 27, 2006.

Statement of Action Requested

Petitioner requests that the new examiner (Yasin Barqadale) follow the guidelines set forth in MPEP 704.01 and recently followed by the district court in *Amgen v. Hoechst Marion Roussel*, 126 F. Supp. 2d 69, 139, 57 USPQ 2d 1449, 1449-1500 (D. Mass. 2001). The Petitioner states that "According to those guidelines, the present examiner must grant full faith and credit to the actions of Examiner Klinger unless Examiner Klinger's action were clearly erroneous."

The action which Applicant requests relief from was mailed September 28, 2006. Applicant filed the petition on January 26, 2007. Because Applicant did not file the petition within two months of the mailing date of the action or notice from which relief is requested the petition is hereby **DENIED** as untimely. Furthermore, it appears from the case history above that the issue the Petitioner presents with respect to MPEP 704.01 is deemed moot since the previous examiner failed to address the argued limitations that the new examiner addresses.



Paul Sewell, Group Director
Technology Center 2100